

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**PALOMAR MEDICAL TECHNOLOGIES, INC.,  
and THE GENERAL HOSPITAL  
CORPORATION,**

**Plaintiffs**

**v.**

**CUTERA, INC.,**

**Defendant**

**Civil Action No. 05-10683-RWZ**

**DECLARATION OF KATE SAXTON IN SUPPORT OF PLAINTIFFS'  
MEMORANDUM OF LAW IN OPPOSITION TO CUTERA, INC.'S MOTION TO  
DISMISS PURSUANT TO RULES 12(b)(2) AND 12(b)(3)**

I, Kate Saxton, hereby declare that:

1. I am an associate at Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Palomar Medical Technologies, Inc. and The General Hospital Corporation (collectively, "Plaintiffs") in the above-captioned matter.
2. I submit this declaration in support of Plaintiffs' Opposition to Cutera's Motion to Dismiss Pursuant to Rules 12(b)(2) and 12(b)(3).
3. I make this declaration based upon my own personal knowledge and my review of documents referenced in the above-captioned litigation, and if called as a witness, could testify competently to the facts set forth herein.
4. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Patent No. 5,595,568.
5. Attached hereto as Exhibit 2 is a true and accurate copy of U.S. Patent No. 5,735,844.

6. Attached hereto as Exhibit 3 are true and correct copies of pages entitled “Physician Locator”, <http://www.cutera.com/locator/main.asp>, printed on July 12, 2005 and July 18, 2005.

7. Attached hereto as Exhibit 4 is a true and correct copy of page entitled “Welcome to Cutera Customer Service”, <http://www.cutera.com/company/support.asp>, printed on July 18, 2005.

8. Attached hereto as Exhibit 5 are true and correct copies of pages entitled “Cutera – Events and Workshops”, <http://www.cutera.com/events/detail.asp?EventID=100058>, printed on July 12, 2005 and July 18, 2005.

9. Attached hereto as Exhibit 6 are true and correct copies of pages entitled “Cutera – Tradeshows”, <http://www.cutera.com/events/tradeshows.asp>, printed on July 18, 2005.

10. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiffs’ Complaint in *Palomar Medical Technologies, Inc. et al. v. Altus Medical, Inc.*, Civil Action No. 02-10258-RWZ.

11. Attached hereto as Exhibit 8 is a true and correct copy of Defendant’s Answer and Counterclaim in *Palomar Medical Technologies, Inc. et al. v. Altus Medical, Inc.*, Civil Action No. 02-10258-RWZ.

12. Attached hereto as Exhibit 9 is a true and correct copy of Defendant’s Amended Answer and Counterclaims in *Palomar Medical Technologies, Inc. et al. v. Altus Medical, Inc.*, Civil Action No. 02-10258-RWZ.

13. Attached hereto as Exhibit 10 is a true and correct copy of a press release issued by Cutera entitled “Cutera Unveils the Solera Platform at AAD”,

<http://ir.cutera.com/phoenix.zhtml?c=130892&p=irol-newsArticle&t=Regular&id=676666&>, printed on July 18, 2005.

14. Attached hereto as Exhibit 11 is a true and correct copy of a 510K Premarket Notification Database print-out for the Cutera Optional Pulsed Light Handpiece Family, <http://www.accessdata.fda.gov/scripts/cfddocs/cfPMN/pmn.cfm?ID=17205>, printed on July 18, 2005.

15. Attached hereto as Exhibit 12 is a true and correct copy of a letter from the United States Food and Drug Administration to Ms. Kathy Maynor, Cutera, Inc., dated March 31, 2005.

16. Attached hereto as Exhibit 13 is a true and correct copy of a document entitled “Attachment 15 510K Summary for the Cutera Optional Pulsed Light Hand Piece Family”, dated March 31, 2005.

17. Attached hereto as Exhibit 14 is a true and correct copy of a 510K Premarket Notification Database print-out for the Cutera Solera Opus Aesthetic Product, <http://www.accessdata.fda.gov/scripts/cfddocs/cfPMN/pmn.cfm?ID=17654>, printed July 18, 2005.

18. Attached hereto as Exhibit 15 is a true and correct copy of a document entitled “Cutera – Information Request,” <http://www.cutera.com/shared/moreinfo.asp>, printed on July 22, 2005.

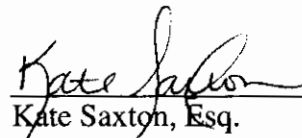
19. Attached hereto as Exhibit 16 is a true and correct copy of a press release issued by Cutera, Inc. entitled “Cutera’s New Hair Removal Innovation: the ProWave 770”, <http://ir.cutera.com/phoenix.zhtml?c=130892&p=irol-newsArticle&t=Regular&id=719713&>, dated July 18, 2005.

20. Attached hereto as Exhibit 17 is a true and correct copy of a Complaint for Declaratory Judgment action filed by Cutera, Inc. in the Federal District for the Northern District of California, *Cutera, Inc. v. Palomar Medical Technologies, Inc. et al.*, Case No. C-05-2749 (N.D. Cal.) (CW).

21. Attached hereto as Exhibit 18 is a true and correct copy of a Complaint for Declaratory Judgment action filed by Cutera, Inc. in the Federal District for the District of Delaware, *Cutera, Inc. v. Palomar Medical Technologies, Inc. et al.*, Case No. 05-484 (D. Del.).

22. Attached hereto as Exhibit 19 is a true and correct copy of Cutera, Inc.'s Form 10-Q for the quarterly period ended March 31, 2005.

Signed this 22<sup>nd</sup> day of July 2005 under the pains and penalties of perjury.

  
Kate Saxton, Esq.

Dated: July 22, 2005